

GAHC010173532022



THE GAUHATI HIGH COURT

(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

Case No: **Bail Appln. 2164/2022**

Mukut Saikia

Son of Late Kharkeswar Saikia

R/O Sawkuchi, Babaji Path, Near Dakhingaon, P.O. Kahilipara,P.S.

Basistha Guwahati- 781029.

.....petitioner

VERSUS

The Central Bureau of Investigation

Rep. by SC, CBI, Guwahat

.....respondent

:: BEFORE ::

HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHOUND

For the Petitioner

: Mr. A.K. Jain

For the Respondent

: Mr. M. Haloi, (Special P.P. CBI)

Date of Hearing : **30.01.2022**

Date of delivery of
Judgment and Order : **14.02.2023**

JUDGMENT

- 1.** Heard Mr. A.K. Jain, learned counsel appearing for the petitioner as well as Mr. M. Haloi, learned Public Prosecutor appearing for the CBI.
- 2.** This is an application under Section 439 Cr.P.C, preferred by the petitioner, namely, Mukut Saikia, who is in the jail hajot since 26.05.2022, in connection with C.R. case No. 4381/2021 arising out of CBI, SCB, Kolkata Case No. RC-10/S/2019 under Sections 120B/364/506/302 of the Indian Penal Code and Paltan Bazar Police Station Case No. 217/2010 registered under Sections 365/341/506/34 IPC.
- 3.** The petitioner was a police personnel. An FIR was lodged by Sri Paramjit Singh on 07.04.2010, which was registered as Paltan Bazar P.S. Case No. 217/2010, under Section 365/341/506/34 IPC and later 302 IPC was added. The FIR was relating to kidnapping of the informant's father Sri Inder Singh Dell from his house. The petitioner's name was also mentioned in the FIR.
- 4.** The legal heirs of the deceased Inder Singh Dell approached this court for an investigation by an independent investigating agency and vide judgment and order dated 04.05.2019 passed in WP(C) 2460/2010 and WP(C) 2767/2010, the Assam Police Investigation Agency was directed to transmit the record to the CBI for investigation. On

21.11.2020, the petitioner was summoned to the CBI office at G.S. Road and the petitioner had co-operated with the investigation and his statement was recorded. The charge-sheet was laid by the CBI on 15.12.2021, showing the petitioner as not arrested in red ink. Summons was issued on 03.06.2022 but a petition was filed on behalf of the petitioner showing cause of his absence. Thereafter, dates were fixed on 28.06.2022 and 22.07.2022. The petitioner's prayer with his cause of absence was rejected and bailable warrant was issued on 25.08.2022. The petitioner, however, went to the Court on 25.07.2022 and prayed for bail, which was rejected and the petitioner was forwarded to the custody.

5. It is submitted on behalf of the petitioner that his co-accused are on bail and he has prayed for bail also on the grounds of parity.

6. It is submitted on behalf of the petitioner that his name has been erroneously shown in red ink as not arrested and it was misconstrued that he was an absconder. The petitioner had co-operated with the investigation. The trial Court also in a mechanical manner forwarded the petitioner to custody. The learned counsel for the petitioner has relied on the decision of the Hon'ble Supreme Court in the case of **Siddharth Vs. State of Uttar Pradesh and Another** reported in **(2022) 1 SCC 676**, wherein, it has been held that:-

“We are in agreement with the aforesaid view of the High Courts and would like to give our imprimatur to the said judicial view. It has rightly been observed on consideration of Section 170 of the Cr.P.C. that it does not impose an obligation on the Officer-in-charge to arrest each and every accused at the time of filing of the charge-sheet. We have, in fact, come across cases where the accused has cooperated with the investigation throughout and yet on the charge-sheet being filed non-bailable warrants have been issued for his production premised

on there quirement that there is an obligation to arrest the accused and produce him before the court. We are of the view that if the Investigating Officer does not believe that the accused will abscondor disobey summon she/she is not required to be produced in custody. The word "custody" appearing in Section 170 of the Cr.P.C.does not contemplate either police or judicial custody but it merely connotes the presentation of the accused by the Investigating Officer before the court while filing the charge-sheet.

7. A written objection was submitted by the respondent. It is alleged that it has been mentioned in the FIR that on 07.04.2009 i.e. on the day when the informant's father was kidnapped, at about 11.00 a.m., one Mr. Saikia and others who frequently visits Smti. Lily and Sara Begum in the same compound threatened and asked the deceased to vacate his residential house failing which he would face dire consequences.

8. It is also submitted that the petitioner is involved with the incident of kidnapping and murder of Sri Inder Singh Dell and there is sufficient evidence against him. The petitioner has failed to appear before the trial court in response to the summonses issued against him on 03.06.2022, 28.06.2022 and 22.07.2022, so he was forwarded to the custody. It is submitted that there are incriminating materials against the petitioner and he is alleged of an offence which is not only grave, but punishable with death and imprisonment for life. The petitioner's case is not akin to the case of his co-accused who are on bail and the question of parity does not arise at all.

9. The conduct of the petitioner is akin to that of a henchmen of late ADGP, Special Branch who procured a plot of land in the name of his wife with false and fabricated documents. In pursuance of a larger conspiracy the petitioner committed the offence with which he is

alleged. The Special Prosecutor, CBI relied in State of U.P. through CBI Vs. Amarmani Tripathi, wherein, it has been held that:-

“ In Prahlad Singh Bhati Vs. NCT, Delhi, 2001 (4) SCC 280, this Court reiterated that if a person was suspected of the crime of an offence punishable with death or imprisonment for life then there must exist grounds which specifically negate the existence of reasonable ground for believing that such an accused is guilty of an offence punishable with the sentence of death or imprisonment for life. The jurisdiction to grant bail must be exercised on the basis of well settled principles having regard to the circumstances of each case. While granting bail, the Court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour, means and standing of the accused, circumstances which are peculiar to the accused and reasonable apprehension of witnesses being tampered with.”

10. It is submitted that the evidence of PW-1 and PW-2 clearly depicts that the petitioner was one of the miscreants who kidnapped the deceased from his house. The body of the deceased was found on the next day. It is submitted that the mobile tower location of the petitioner showed his presence at the place of occurrence. Ganesh Nath PW-52 was driving the Maruti van in which the present petitioner and three others abducted Inder Singh Dell. His statement has also been recorded under Section 164 Cr.P.C. The two co-accused had fraudulently sold the plot of land occupied by the deceased to the wife of the ADGP under whose instructions the petitioner was working. It is submitted that the case of the petitioner falls in the 'b' category of offence as described in the Judgment of the Hon'ble Supreme Court in Satender Kumar Singh Antil Vs. Central Bureau of Investigation reported in 2022 LiveLaw (SC) 577.

11. I have given my anxious consideration to the submissions at the Bar. I have considered the role of the petitioner. The magnitude of the offence is also taken into consideration. I would not like to get into the details of the merits of the case, but on the face of the record,

it appears that fair trial may be impeded, if the petitioner is at large. There is also possibility that the witnesses may apprehend threats to their life. This is a case where a person was eliminated and the witnesses may also be petrified to reveal the truth, if the petitioner is at large. I have scrutinized the statements witnesses under Sections 161/164 Cr.P.C.

12. It is alleged that the petitioner has exercised threats to the witness Ganesh Nath. His henchmen have also exercised threats to the driver, Ganesh Nath.

13. This impelled, the witness Ganesh Nath, who is petrified to file an application informing the Investigating Agency regarding his security.

14. At this juncture, the error of the Investigating Agency in showing the petitioner as not arrested cannot be considered. *Ex facie*, it is evident that there may be possibilities of impediment of trial. There may be possibilities of threats to witnesses. The propensity of the petitioner to pressurise the witnesses appears to be possible at this stage.

15. In view of my foregoing discussions, at this stage of trial, I am not inclined to grant bail to the petitioner. Accordingly, petition stands rejected at this stage.

Send back the LCR.

JUDGE

Comparing Assistant